

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY M. HERRERA,

Plaintiff,

v.

JEFF LYNCH, et al.,

Defendants.

No. 2:24-cv-1660 CSK P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's motion for a preliminary injunction and temporary restraining order filed June 17, 2024. (ECF No. 4.) For the reasons stated herein, this Court recommends that plaintiff's motion be denied.

I. Legal Standards

Federal Rule of Civil Procedure 65 governs injunctions and restraining orders, and requires that a motion for temporary restraining order include "specific facts in an affidavit or a verified complaint [that] clearly show that immediate, and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition," as well as written certification from the movant's attorney stating "any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b).

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1 Temporary restraining orders are generally governed by the same standard applicable to  
2 preliminary injunctions, except that preliminary injunctions require notice to the adverse party.  
3 See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc., 181 F. Supp. 2d 1111, 1126  
4 (E.D. Cal. 2001); Fed. R. Civ. P. 65(a). Eastern District of California Local Rule 231, however,  
5 requires notice for temporary restraining orders as well, “[e]xcept in the most extraordinary of  
6 circumstances,” and the court considers whether the applicant could have sought relief by motion  
7 for preliminary injunction at an earlier date. E.D. Cal. Local Rule 231(a)-(b). A temporary  
8 restraining order “should be restricted to serving [its] underlying purpose of preserving the status  
9 quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.”  
10 Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S.  
11 423, 439 (1974).

12 A temporary restraining order is “an extraordinary remedy” and may be issued only if  
13 plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in  
14 the absence of preliminary relief; (3) that the balance of equities tips in his/her favor; and (4) that  
15 an injunction is in the public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20  
16 (2008). Plaintiff bears the burden of clearly satisfying all four prongs. Alliance for the Wild  
17 Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). A temporary restraining order will not  
18 issue if plaintiff merely shows irreparable harm is possible – a showing of likelihood is required.  
19 Id. at 1131.

20 The injunctive relief an applicant requests must relate to the claims brought in the  
21 complaint. See Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr., 810 F.3d 631, 633 (9th Cir.  
22 2015) (“When a Plaintiff seeks injunctive relief based on claims not pled in the complaint, the  
23 court does not have the authority to issue an injunction.”). Absent a nexus between the injury  
24 claimed in the motion and the underlying complaint, the court lacks the authority to grant plaintiff  
25 any relief. Id. at 636; see also Beaton v. Miller, 2020 WL 5847014, at \*1 (E.D. Cal. Oct. 1, 2020)  
26 (the court’s jurisdiction is “limited to the parties in this action” and the pendency of an action  
27 “does not give the Court jurisdiction over prison officials in general or over the conditions of an  
28 inmate’s confinement unrelated to the claims before it.”).

1           The Prison Litigation Reform Act (“PLRA”) imposes additional requirements on prisoner  
2 litigants seeking preliminary injunctive relief against prison officials. In such cases,  
3 “[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to  
4 correct the harm the court finds requires preliminary relief, and be the least intrusive means  
5 necessary to correct that harm.” 18 U.S.C. § 3626(a)(2); Villery v. California Dep’t of Corr.,  
6 2016 WL 70326, at \*3 (E.D. Cal. Jan. 6, 2016). As the Ninth Circuit has observed, the PLRA  
7 places significant limits upon a court’s power to grant preliminary injunctive relief to inmates,  
8 and “operates simultaneously to restrict the equity jurisdiction of federal courts and to protect the  
9 bargaining power of prison administrators—no longer may courts grant or approve relief that  
10 binds prison administrators to do more than the constitutional minimum.” Gilmore v. People of  
11 the State of California, 220 F.3d 987, 998-99 (9th Cir. 2000).

## 12       II.     Background

13           Plaintiff filed his complaint on June 10, 2024. (ECF No. 1.) On June 14, 2024, this Court  
14 granted plaintiff thirty days to file an in forma pauperis affidavit or pay the filing fee. (ECF No.  
15 3.) The Court has not screened plaintiff’s complaint because it is awaiting plaintiff’s response to  
16 the June 14, 2024 Order.

17           Named as defendants in the complaint are California State Prison-Sacramento (“CSP-  
18 Sac”) Sergeant Akins, CSP-Sac Correctional Officers Mayfield and Rowberg, CSP-Sac Warden  
19 Lynch and CSP-Sac Captain Gomez. (ECF No. 1 at 3-4, 8.) Plaintiff alleges that on October 4,  
20 2023, plaintiff was called out of his cell and told that the Sergeant wanted to speak with him. (Id.  
21 at 5.) When plaintiff got to the office, defendant Akins had handcuffs out. (Id.) Defendant  
22 Akins told plaintiff that he was taking plaintiff’s cell and that plaintiff had to cuff up because he  
23 was sending plaintiff to administrative segregation (“ad seg”). (Id.) Plaintiff asked if this was  
24 due to plaintiff’s numerous complaints on officials at CSP-Sac. (Id.) Defendant Akins placed  
25 handcuffs on plaintiff and put plaintiff in the B-Facility holding cage at around 7:30 a.m. (Id.)  
26 Plaintiff kept calling out to correctional officers and defendant Akins that he needed to use the  
27 restroom. (Id.) Plaintiff’s back and legs hurt because he had to stand up the whole time. (Id.)  
28 Right before dinner, plaintiff saw defendants Mayfield and Rowberg. (Id.) Plaintiff told

1 defendant Mayfield that he was in a lot of pain (Id.) Plaintiff stated that he had been in the cage  
2 for over 12 hours without water or his mental health medication. (Id. at 6.) Defendant Mayfield  
3 laughed. (Id.) Plaintiff alleges that defendant Captain Gomez had full knowledge of the  
4 violations and was “acting as the person controlling these incidents I was placed in.” (Id. at 8.)  
5 Plaintiff alleges that defendants violated the Eighth Amendment by making plaintiff stand in the  
6 holding cell for over 12 hours. (Id. at 6-8.)

7 III. Claims in Pending Motion for Injunctive Relief

8 In the pending motion, plaintiff requests an emergency transfer out of CSP-Sac. (ECF No.  
9 4 at 1.) Plaintiff alleges that if he stays at CSP-Sac, he believes he will be killed and that his life  
10 is in real danger. (Id.) Plaintiff wants his administrative grievances investigated and CSP-Sac  
11 officials to stop writing plaintiff up for false rules violation reports. (Id.) Plaintiff requests that  
12 the Court order prison officials to stop harassing plaintiff. (Id.) Plaintiff alleges that he wants to  
13 be protected from “these people” trying to set plaintiff up by paying other inmates to cause  
14 plaintiff harm. (Id. at 2.) Plaintiff requests that he “[b]e granted my package” that was at the  
15 prison on April 10, 2024 or have his family compensated. (Id. at 3.) Plaintiff requests that he be  
16 granted single cell status. (Id. at 13.)

17 In support of his request for injunctive relief, plaintiff references the allegations in the  
18 complaint. (Id. at 4, 6.) Plaintiff also alleges that in 2022, prison officials first attempted to set  
19 plaintiff up. (Id. at 7.) Plaintiff claims that in 2022, defendant Captain Gomez denied the mental  
20 health team’s request for plaintiff to receive single cell status so that his officers could set  
21 plaintiff up for violence. (Id.) Plaintiff alleges that in 2022 and 2023 he wrote many staff  
22 complaints that went unanswered. (Id. at 8.) Plaintiff alleges that he has been hit over the head  
23 more than 20 times with a baton by more than three different officers. (Id.) Plaintiff alleges that  
24 these incidents have not been investigated. (Id.) Plaintiff alleges that he was beat until the point  
25 that he was deaf in one ear. (Id. at 9.) Plaintiff alleges that prison officials at Kern Valley State  
26 Prison (“KVSP”) targeted plaintiff as soon as plaintiff got off the bus at CSP-Sac. (Id.) Plaintiff  
27 alleges that he witnessed prison officials at CSP-Sac attack and beat other inmates. (Id.) Plaintiff  
28 alleges that just recently he saw close to ten correctional officers murder a person. (Id. at 9-10.)

1 Plaintiff alleges that back in November 2023, he filed a staff misconduct complaint requesting  
2 that the B yard staff be investigated for putting people's lives in danger. (Id. at 10.) Plaintiff  
3 alleges that because "we are consider EOP/patients, custody try to do anything they want or feel  
4 because they feel like they can get away with it."<sup>1</sup> (Id.) Plaintiff alleges that Lieutenant  
5 Rossenberg sent Correctional Officer Archie to harass plaintiff. (Id. at 11.) They took plaintiff's  
6 tablet and now plaintiff cannot communicate with his family. (Id.) Plaintiff alleges that on  
7 February 15, 2021, three correctional officers attempted to murder plaintiff by beating him over  
8 the head 20 times. (Id. at 14.) Plaintiff alleges that he will keep refusing cellmates in order to  
9 protect himself. (Id.)

10 Plaintiff attaches several grievances as exhibits to the pending motion. In the first  
11 grievance (No. 472333), signed by plaintiff on October 31, 2023, plaintiff alleged harassment by  
12 Officer Herrera in October 2023. (Id. at 19-20.) In the second grievance (No. 576664), signed by  
13 plaintiff on February 6, 2024, plaintiff alleged that defendant Warden Lynch allows his  
14 employees to commit misconduct. (Id. at 21-22.) In the third grievance (No. 469540), signed by  
15 plaintiff on October 24, 2023, plaintiff alleged that prison officials refused to transfer plaintiff  
16 closer to his family. (Id. at 23-24.) Plaintiff attaches documents from an appeal of the third  
17 grievance (No. 469540), in which he complained about missing property. (Id. at 25-28.) In the  
18 fourth grievance (No. 467344), signed by plaintiff on October 19, 2023, plaintiff alleged that he  
19 feared for his life and was being set up. (Id. at 30-31.) In the fourth grievance, plaintiff also  
20 appeared to raise the claims raised in the instant action. (Id.)

21 Plaintiff also attaches documents from a rules violation report charging plaintiff with  
22 battery on a peace officer at KVSP on February 15, 2021. (Id. at 32-64.)

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25 <sup>1</sup> "EOP" refers to Enhanced Outpatient Program. Inmates who receive enhanced outpatient  
26 program care are designated "EOP" by California Department of Corrections and Rehabilitation  
27 ("CDCR") Mental Health Services because they are receiving mental health care services.  
28 Martinez v. Tilton, 2015 WL 1198739, at \*7 (E.D. Cal. March 16, 2015). "EOP is characterized  
by a separate housing unit and structured activities for mentally ill inmate-patients who, because  
of their illness, experience adjustment difficulties in a General Population ("GP") setting, yet are  
not so impaired as to require 24-hour patient care." (Id.)

1 IV. Discussion

2 Plaintiff makes serious allegations in the pending motion. However, for the following  
3 reasons, this Court finds that plaintiff does not meet the standard for injunctive relief.

4 The only specific claims in the pending motion against defendants are based on the  
5 allegations in the complaint and that in 2022, defendant Captain Gomez denied the mental health  
6 team's request for plaintiff to receive single cell status so that officers could set plaintiff up.  
7 "[W]here immediate injunctive relief is sought based on claims that governmental actors or  
8 agencies have violated the law in the past, ... Plaintiff must establish that the threat of future or  
9 repeated injury is both 'real and immediate,' not just 'conjectural' or 'hypothetical.'" Davis v.  
10 Paramo, 2016 WL 5724908, at \*5 (S.D Cal. July 18, 2016) (citing City of Los Angeles v. Lyons,  
11 461 U.S. 95, 102 (1983)). To be entitled to injunctive relief, plaintiff must do more than cite  
12 defendants' past actions. Rabb v. Figueroa, 2024 WL 1508823, at \*3 (E.D. Cal. Apr. 8, 2024)  
13 (citing Bradford v. Jordan, 2018 WL 11328113 at \*3 (C.D. Cal. Nov. 19, 2018)). This Court  
14 finds that plaintiff fails to demonstrate a threat of real and immediate harm from defendants based  
15 on the claim in the complaint that defendants placed plaintiff in a holding cell for over 12 hours in  
16 October 2023. This Court also finds that plaintiff's claim that defendant Captain Gomez denied  
17 plaintiff single cell status in 2022 fails to demonstrate a threat of real and immediate harm by  
18 defendants related to the claims raised in the complaint.

19 Plaintiff's grievance signed February 6, 2024 alleging that defendant Warden Lynch  
20 allowed his employees to commit misconduct does not allege specific instances of misconduct  
21 committed by defendants. While this grievance alleges that defendant Lynch supported  
22 misconduct committed by every captain from defendant Gomez "and before him" (ECF No. 4 at  
23 21), plaintiff alleges no specific instances of misconduct by defendant Gomez in this grievance.  
24 This Court finds that the vague and conclusory allegations against defendants Warden Lynch and  
25 Captain Gomez in this grievance do not demonstrate a threat of real and immediate harm by  
26 defendants related to the claims raised in the complaint.

27 The remaining claims in the pending motion are not based on the claims raised in the  
28 complaint. As discussed above, the Court cannot grant injunctive relief regarding claims not

1 raised in the complaint. Pac. Radiation Oncology, LLC., 810 F.3d at 633. Plaintiff's claims of  
2 misconduct that are not based on the claims raised in the complaint should be pursued in a  
3 separate action.

4 For the reasons discussed above, plaintiff's motion for injunctive relief should be denied.  
5 However, due to the serious nature of the claims raised in the pending motion, and in an  
6 abundance of caution, this Court directs the Clerk of the Court to serve these findings and  
7 recommendations and plaintiff's motion for injunctive relief on Supervising Deputy Attorney  
8 General Monica Anderson.

9 V. Conclusion

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The Clerk of the Court shall assign a district judge to this action;  
12 2. The Clerk of the Court shall serve these findings and recommendations and plaintiff's  
13 motion for injunctive relief (ECF No. 4) on Supervising Deputy Attorney General  
14 Monica Anderson; and

15 IT IS HEREBY RECOMMENDED that plaintiff's motion for injunctive relief (ECF No.  
16 4) be denied.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, plaintiff may file written objections  
20 with the court and serve a copy on all parties. Such a document should be captioned  
21 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that  
22 failure to file objections within the specified time may waive the right to appeal the District  
23 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24  
25 Dated: June 21, 2024

26   
27 CHI SOO KIM  
28 UNITED STATES MAGISTRATE JUDGE

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